

STANDARD TERMS OF ENGAGEMENT

These Standard Terms of Engagement (**Terms**) apply in respect of all work carried out by us for you, except to the extent that we otherwise agree with you in writing.

1. Services

- 1.1 The services we are to provide for you are outlined in our engagement letter.

2. Financial**2.1 Fees:**

- 2.1.1 The fees we will charge or the manner in which they will be arrived at, are set out in our engagement letter.

- 2.1.2 If the engagement letter specifies a fixed fee, we will charge this for the agreed scope of our services. Work which falls outside that scope will be charged on an hourly rate basis. We will advise you as soon as reasonably practicable if it becomes necessary for us to provide services outside the agreed scope and, if requested, give you an estimate of the likely amount of the further costs.

- 2.1.3 Where our fees are calculated on an hourly basis, the hourly rates are set out in our engagement letter. The differences in those rates reflect the experience and specialisation of our professional staff. Time spent is recorded in 6 minute units, with time rounded up to the next unit of 6 minutes.

- 2.1.4 From time to time the hourly rates as recorded in our Letter of Engagement may increase to reflect the increased experience of the particular solicitor, inflation, or other market factors.

- 2.2 **Disbursements and expenses:** In providing services we may incur disbursements or have to make payments to third parties on your behalf. These will be included in our invoice to you when the expense is incurred.

- 2.3 **GST (if any):** Is payable by you on our fees and charges.

- 2.4 **Invoices:** We will send interim invoices to you, usually monthly and on completion of the matter, or termination of our engagement. We may also send you an invoice when we incur a significant expense.

- 2.5 **Payment:** Invoices are payable by the 20th of the month following date of the invoice, unless alternative arrangements have been made with us. We may require interest to be paid on any amount which is more than 7 days overdue. Interest will be calculated at the rate of 5% above our firm's main trading bank's 90-day bank bill buy rate as at the close of business on the date payment became due. We are also entitled to retain custody of your documents and files until all accounts are paid in full and recover from you our costs on an indemnity (solicitor and client) basis of all steps taken to recover any outstanding invoices.

2.6 **Retainer/Guarantee:** For new clients, usually a retainer will be required before we commence work (and we may also require a guarantee from a corporate client's shareholders). We will hold the retainer in our trust account and apply it against monthly invoices when they are due. If the balance of the retainer we hold is less than the fees we anticipate, we may require it to be reinstated to cover those anticipated fees. Any surplus at the conclusion of the project will be returned to the Client. You agree that in view of associated compliance costs and applicable interest rates it is neither reasonable nor practicable for this firm to hold retainer sums on interest bearing deposit.

2.7 **Monies held:**

2.7.1 All clients' funds received by Morrison Mallett are held on trust and are paid out in accordance with instructions received by the client.

2.7.2 You agree that that in view of associated compliance costs and applicable interest rates it is neither reasonable nor practicable for this firm to hold clients' funds on interest bearing deposit and nor does this firm invest funds for or on behalf of its clients.

2.7.3 In the event that we are engaged to hold client's funds in such sum and for such time that we, at our sole discretion, expressly agree that it is reasonable and practicable to hold such funds on interest bearing deposit, then the following conditions will apply:

(a) you will be required to first complete and provide to us all information that we require for the purposes of *Customer and source of funds verification* as set out below;

(b) interest will attract the full New Zealand Resident Withholding Tax rate or the applicable Non-Resident Withholding Tax rate for your resident country;

(c) we will charge you our reasonable costs of all attendances in respect of our holding of such moneys, including our reasonable costs of compliance with the requirements of the Anti-Money Laundering and Countering Financing of Terrorism Act (**AML/CFT Act**), the United States Foreign Account Tax Compliance Act (**FATCA**) and the OECD Common Reporting Standard (**CRS**);

(a) we may also charge you up to 5% of the gross interest earned on the funds held on interest bearing deposit.

2.7.4 For the avoidance of doubt, where we hold any client funds on trust, you also agree that we are entitled to charge you our reasonable costs of all attendances in respect of our holding of such moneys, including our reasonable costs of compliance with the requirements of AML/CFT, FATCA and CRS where applicable.

2.7.5 Morrison Mallett will provide a detailed account statement and where applicable a Resident or Non-Resident Withholding Tax certificate as applicable annually following the conclusion of the 31 March tax year.

2.7.6 Morrison Mallett may make any other lawful set-off against, or claim any lawful lien on, all or part of any client's funds held (including its proceeds) for any of that client's debts due to Morrison Mallett.

- 2.8 **Third Parties:** Although you may expect to be reimbursed by a third party for our fees and expenses, and although our invoices may at your request or with your approval be directed to a third party, nevertheless you remain responsible for payment to us if the third party fails to pay us.

3. **Customer and source of funds verification**

- 3.1 You authorise us to collect information about you, and make enquiries we think appropriate, whether by us and/or by our AML/CFT Act agent, First AML Limited, to:

- 3.1.1 carry out reasonable credit checks on you;
- 3.1.2 confirm information provided to us about you is true;
- 3.1.3 undertake due diligence and monitoring according to the AML/CFT Act, and to our obligations under the FATCA and the CRS;
- 3.1.4 enforce debt and legal obligations (including recovering money owed to us);
- 3.1.5 comply with other legal obligations we may have;

and you also authorise us to charge you the reasonable costs of our compliance with the requirements of AML/CFT, FATCA and CRS where such compliance is necessary for us to accept your instructions and act for you.

- 3.2 You accept we may use third party services (service providers) to verify your identity and conduct other due diligence or monitoring required under the AML/CFT Act and/or FATCA and/or CRS, and for credit checking. When we use these services:

- 3.2.1 each service provider will exchange information about you, and may hold it on their system and use it to provide the specific service to other customers; and
- 3.2.2 we may use a service provider in the future for any authorised purpose. This may include using an update service if information about you changes.

Verifying identity and source of funds

- 3.3 We are required by law to verify your identity, and sometimes, the source of funds for a transaction.
- 3.4 We must do this by gathering and sighting documentation as requested, including a driver's licence and/or passport and/or some other form of government issued photographic ID of you. We may hold an electronic copy of such documentation in our system for future reference.

4. **Confidentiality**

- 4.1 We will hold in confidence all information concerning you or your affairs that we acquire during the course of acting for you. We will not disclose any of this information to any other person except:

- 4.1.1 to the extent necessary or desirable to enable us to carry out your instructions; or

- 4.1.2 to the extent required by law (e.g. AML/CFT Act, Inland Revenue Department, The Financial Markets Authority, and other Government agencies can compel us to provide information) or by the Law Society's Rules of Conduct and Client Care for Lawyers.
- 4.2 Confidential information concerning you will as far as practicable be made available only to those within our firm who are providing legal services for you.
- 4.3 We will, of course, not disclose to you confidential information which we have in relation to any other client. You waive whatever rights you might have to receive the confidential information of another client.
5. **Duty of Care**
- 5.1 Our duty of care is to you and not to any other person. Before any other person may rely on our advice, we must expressly agree to this.
- 5.2 If we agree to any other person relying on our advice, they will be deemed to be your "Associate" for the purposes of clause 6 below. Without limitation, this means that our liability to any such third party will be taken into account when assessing our aggregate liability to you under clause 6.
6. **Limitation of liability**
- 6.1 To the extent permitted by law, our aggregate liability to you, together with your Associates (whether in contract, equity, tort or otherwise) arising out of your engagement of us on a matter (or any series of related matters) is limited to and will not exceed:
- 6.1.1 the amount available to be paid out under any relevant insurance policies held by us, up to a maximum of NZ\$5,000,000; or
- 6.1.2 where no amount is available to be paid out under our relevant insurance policies, the lesser of NZ\$1,000,000 and the amount of four times our fee applicable to the matter or series of related matters (excluding disbursements and GST).
- 6.2 For the avoidance of doubt and subject to clause 6.1 above, our aggregate liability to you, together with your Associates, in connection with all of the services we provide to you and to your Associates in any 12 month period (whether or not our services apply to separate or related matters), to be paid out under any relevant insurance policies held by us, is limited to, and will not exceed, NZ\$5,000,000.
- 6.3 For the purposes of any claim against us, as defined by the Limitation Act 2010, arising directly or indirectly in connection with our engagement or the services that we provide to you, that Act is modified so that any claim must be filed within 12 months after the date of the act or omission on which the claim is based. In addition, the "late knowledge" provisions in sections 11(2), 11(3), 14 and 32(2) of that Act do not apply. The 12 month time period applies whether or not the loss or damage has become apparent or has been suffered within that time period.
- 6.4 By engaging us, you agree that the above limitations of liability are fair and reasonable.

7. **Information about you**

- 7.1 In addition to those matters outlined above in respect of *Customer and Source of Funds Verification*, we may collect and retain information about you as part of providing services to you. We will use this information to inform you of changes to our business, to advise you of matters that we reasonably believe may be of interest to you and to advise you of matters that may impact on the way in which we may in the future provide services to you. The information referred to will be held at our offices or those of our third party service provider.
- 7.2 You have the right at any time to have access to any information we hold about you and to ask us to correct any incorrect information, provided you first meet our reasonable costs of responding to such requests. Should you wish to review the information held by us, please contact us by email on enquiries@morrisonmallett.co.nz or by telephone on +64 4 472 0022 or +64 9 320 3283. Alternatively, you can contact the Partner who is responsible for your work.
- 7.3 We may provide information to credit agencies about any account you have failed to pay by the due date.

8. **Electronic communications**

- 8.1 Unless otherwise agreed with you, we may communicate with you and others by electronic means. As you will be aware, such communications are not secure and may be subject to unauthorised interception, interference, error or virus. While we will take all reasonable steps to protect our communications from such occurrences, we will not accept any responsibility and will not be liable for any damage or loss if they occur.

9. **Termination**

- 9.1 You may terminate our retainer at any time.
- 9.2 We may terminate our retainer in any of the circumstances set out in the Law Society's Rules of Conduct and Client Care for Lawyers.
- 9.3 If our retainer is terminated you must pay us all fees due up to the date of termination and all expenses incurred up to that date. We are also entitled to retain custody of your documents and files until all accounts are paid in full.
- 9.4 These Terms continue to apply following the termination of our engagement.

10. **Retention of files and documents**

- 10.1 You authorise us (without further reference to you) to destroy all files and documents for any matter (other than any documents that we hold in safe custody for you) seven years after our engagement in respect of that matter ends, or earlier if we have converted those files and documents to an electronic format.
- 10.2 We may store those files and documents in any format we choose and at premises outside our offices, including online storage located within or outside New Zealand, which may be operated by independent service providers. We are not liable for any loss or damage caused to files or documents that are stored outside our offices.

- 10.3 If you uplift your files or documents, we may make copies of them before giving them to you and may require you to pay all amounts owed to us and the reasonable costs of that copying before we provide those files or documents to you.

11. Conflicts of Interest

- 11.1 We have procedures in place to identify and respond to conflicts of interest. If a conflict of interest arises we will advise you of this and follow the requirements and procedures set out in the Law Society's Rules of Conduct and Client Care for Lawyers.
- 11.2 We may accept instructions to act for other clients or potential clients who operate in the same market as you or who may otherwise compete with you, but we will not act on a matter that:
- 11.2.1 is the same matter on which we are currently acting for you, without your prior consent;
or
- 11.2.2 would require us to disclose confidential information that we have obtained from you.
- 11.3 We will not knowingly accept instructions from you to commence proceedings against another client of ours or from another client to commence proceedings against you during the term of our retainer with you.

12. General

- 12.1 These Terms apply to any current engagement and also to any future engagement.
- 12.2 We are entitled to change these Terms from time to time.
- 12.3 For the avoidance of doubt, our terms of engagement in respect of each matter that we undertake for you shall be on the terms contained on our website at the date when we commenced such work (and where applicable as were provided to you with our letter of engagement in respect of the particular Project).